

This is not the official court record. Official records of court proceedings may only be obtained directly from the court maintaining a particular record.

Linda L Starke Colsten v. Muncie Sanitary District

Case Number	18C03-2011-CT-000120
Court	Delaware Circuit Court 3
Type	CT - Civil Tort
Filed	11/02/2020
Status	11/02/2020 , Pending (active)

Parties to the Case

Defendant Muncie Sanitary District

Address

300 N. High Street
3rd Floor
Muncie, IN 47305

Attorney

David Lee Swider
#51749, Lead, Retained

BOSE McKINNEY & EVANS LLP
111 Monument Circle
Suite 2700
Indianapolis, IN 46204
317-684-5000(W)

Attorney

Philip Richard Zimmerly
#3021706, Retained

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
317-684-5000(W)

Plaintiff Starke Colsten, Linda L

Address

3828 S Beacon St
Muncie, IN 47302

Attorney

Aaron Jamaal Williamson
#3280349, Retained

8888 Keystone XING
STE 1300
Indianapolis, IN 46240
317-434-0370(W)

Chronological Case Summary

11/02/2020 Case Opened as a New Filing

EXHIBIT A

11/04/2020 Complaint/Equivalent Pleading Filed

Complaint for Damages

Filed By: Starke Colsten, Linda L

File Stamp: 11/02/2020

11/04/2020 Appearance Filed

Appearance by Attorney in Civil Case

For Party: Starke Colsten, Linda L

File Stamp: 11/04/2020

11/04/2020 Subpoena/Summons Filed

Summons

Filed By: Starke Colsten, Linda L

File Stamp: 11/04/2020

11/17/2020 Appearance Filed

Appearance of David L. Swider and Philip R. Zimmerly for Defendant

For Party: Muncie Sanitary District

File Stamp: 11/17/2020

11/17/2020 Motion for Enlargement of Time Filed

Motion for Enlargement of Time to Answer Complaint

Filed By: Muncie Sanitary District

File Stamp: 11/17/2020

11/17/2020 Order Granting Motion for Enlargement of Time

ORDERED that Defendant, Muncie Sanitary District's, response to Plaintiff's Complaint is due on or before January 4, 2021.

Order Signed: 11/17/2020

11/18/2020 Automated ENotice Issued to Parties

Order Granting Motion for Enlargement of Time ---- 11/17/2020 : Aaron Jamaal Williamson;David Lee Swider;Philip Richard Zimmerly

Financial Information

* Financial Balances reflected are current representations of transactions processed by the Clerk's Office. Please note that any balance due does not reflect interest that has accrued – if applicable – since the last payment. For questions/concerns regarding balances shown, please contact the Clerk's Office.

Starke Colsten, Linda L

Plaintiff

Balance Due (as of 11/19/2020)

0.00

Charge Summary

Description	Amount	Credit	Payment
Court Costs and Filing Fees	157.00	0.00	157.00

Transaction Summary

Date	Description	Amount
11/04/2020	Transaction Assessment	157.00
11/04/2020	Electronic Payment	(157.00)

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18C03-2011-CT-000120

Delaware Circuit Court 3

Filed: 11/2/2020 9:34 PM
Clerk
Delaware County, Indiana

STATE OF INDIANA	)	IN THE DELAWARE COUNTY COURT
	)SS:	
COUNTY OF DELAWARE	)	CAUSE NO.:
LINDA L. STARKE COLSTEN)	
)	
Plaintiff,)	
)	
v.)	
)	
MUNCIE SANITARY DISTRICT)	
)	
Defendant.)	

COMPLAINT FOR DAMAGES*I. INTRODUCTION*

Plaintiff, Linda L. Starke Colsten (hereinafter “Colsten”) brings this action against Defendant, Muncie Sanitary District (the “District” or the “Defendant”) for violations of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§621 *et seq.*, the Americans with Disabilities Act of 1990 (“ADA”), as amended by the ADA Amendments Act of 2008 (“ADAAA”), 42 U.S.C. §§ 12101 to 12213 (collectively, the “ADA”), and the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.*

The District hired Colsten in 1975 and terminated her employment on or about November 10, 2019. Prior to her termination, the District employed Colsten as a Secretary. At the time of her termination, Colsten was 71 years old. During the prior several years of her employment, Colsten took FMLA leave for her chronic obstructive pulmonary disease (“COPD”). Colsten’s direct supervisor, Rick Conrad (“Conrad”) was aware of her COPD and her FMLA leaves.

On or about November 5, 2019, Colsten was advised that her position was being eliminated. Based on information and belief, Colsten's duties were assumed by a co-worker in her forties. On November 10, 2019, Colsten was separated from employment.

I. PARTIES

1. During the period relevant to this Complaint, Colsten resided in Muncie, Delaware County, Indiana.

2. During the period relevant to this Complaint, the District was a special unit of government created under Indiana State law by the action of an Ordinance of the City of Muncie, Indiana adopted in 1968. The District is managed under the provisions of Ind. Code 36-9-25 and is governed by a three-person Board of Sanitary Commissioners ("Board") which acts as both the Executive Body and Fiscal Body of the Muncie Sanitary District.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to Ind. Code 29-1-1.5(1).

4. Venue is proper in the Court because Colsten resides in Muncie, Delaware County, Indiana.

III. CONDITIONS PRECEDENT

5. On December 12, 2019, Colsten timely filed a charge of Age and Disability discrimination with the Equal Employment Opportunity Commission (hereinafter “EEOC”).

6. On August 5, 2020, the EEOC issued Colsten a Notice of Right to Sue letter. This Complaint has been filed within 90 days of receipt of that notice. Colsten has fully complied with all prerequisites to jurisdiction in this Court under the ADEA, the ADA, and the FMLA.

IV. FACTUAL ALLEGATIONS

7. Colsten is presently seventy-two (72) years old.

8. Colsten began working for the District in 1975. At the time the District hired Colsten, she was twenty-six (26) years old.

9. The District is a unit of government created through ordinance enacted by the City of Muncie.

10. Colsten reported to the Director of the Bureau of Water Quality/MS4 Coordinator, Conrad.

11. The District is governed by a three-person Commission.

12. The District Administrator was Nikki Grigsby (“Grigsby”).

13. Grigsby was on administrative leave and otherwise unavailable to receive complaints of discrimination on and around November 2019.

14. The President of the Board was William Smith ("Smith").

15. The District Attorney was Mark McKinney ("McKinney").

16. Immediately prior to her termination, Colsten served as a Secretary for the District.

17. During her tenure as Secretary, Colsten's duties included answering telephones, greeting and assisting visitors, various clerical duties, and assisting with payroll.

18. During her tenure, Colsten's work performance met or exceeded the District's legitimate expectations.

19. Colsten was diagnosed with COPD.

20. Following her diagnosis, Colsten informed the District she was diagnosed with COPD.

21. Colsten was able to perform all of the essential functions of her job with or without a reasonable accommodation.

22. Colsten submitted FMLA paperwork to the District related to her COPD.

23. On November 5, 2019, Smith, in consultation with Conrad and McKinney, informed Colsten her position was eliminated and that her employment with the District was terminated.

24. Colsten's separation from employment became effective five days later.

25. Colsten's job duties were taken over by a much younger employee who is believed to be in her forties.

26. Colsten has diligently sought to mitigate her damages since being terminated, but without lasting success.

V. AGE DISCRIMINATION

27. Colsten incorporates herein by reference paragraphs 1 through 26 above.

28. At the time of her termination, Colsten was seventy-one (71) years old.

29. The District subjected Colsten to disparate treatment because of her age.

30. The District treated similarly situated, younger employees better than Colsten with respect to job elimination.

31. The District terminated Colsten because of her age.

32. The District's actions violated the ADEA.

33. Colsten has been harmed as a result of Defendant's unlawful actions.

VI. DISABILITY DISCRIMINATION

34. Colsten incorporates herein by reference paragraphs 1 through 33 above.

35. Colsten is a qualified individual with a disability and/or perceived by the District to have a disability and/or has a record of disability.

36. The District subjected Colsten to disparate treatment because of her disability and/or because it perceived her to have a disability and/or because Colsten has a record of disability.

37. The District treated similarly situated, non-disabled employees better than Colsten with respect to transferring said employees to other positions and selecting which positions to eliminate.

38. The District terminated Colsten because of her disability and/or because it perceived her to have a disability and/or because Colsten has a record of disability.

39. Defendant's actions violated the ADA.

40. Plaintiff has been harmed as a result of Defendant's unlawful actions.

VII. FMLA RETALIATION

41. Colsten incorporates herein by reference paragraphs 1 through 40 above.

42. Colsten exercised her FMLA rights by taking FMLA leave.

43. Colsten was qualified for her position and had performed her job duties effectively prior to the acts complained of herein.

44. Colsten suffered an adverse employment action in that she was separated from employment on or about November 10, 2019.

45. The District's alleged reason for terminating Colsten's employment is pretextual and baseless.

46. The District's conduct constitutes unlawful retaliation against Colsten in violation of her rights under the FMLA, U.S.C. § 2615(a).

47. As a direct and proximate the District's acts and missions, Colsten has suffered continues to suffer losses including past and future lost wages and benefits.

48. Colsten is entitled to liquidated damages and attorneys' fees and costs, and other damages as recoverable by law.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Claire Colsten, respectfully requests judgment as follows:

1. Accept jurisdiction over this matter;
2. Find that the District violated the ADA, ADEA, and FMLA;
3. Order the District to reinstate Colsten or pay front-pay damages in lieu of reinstatement;
4. Order the District to pay to Colsten lost wages and benefits;
5. Order the District to pay to Colsten compensatory damages;
6. Order the District to pay Colsten punitive damages;
7. Order the District to pay Colsten liquidated damages;
8. Order the District to pay Colsten pre- and post-judgment interest;
9. Order the District to pay Colsten attorney's fees and costs; and

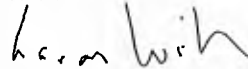
10. Grant Colsten such additional or alternative relief as the Court deems just and proper.

JURY DEMAND

Colsten demands a trial by jury on all claims properly triable by a jury.

Respectfully submitted

WILLIAMSON CIVIL LAW, LLC



Aaron J. Williamson
Attorney No. 32803-49
8888 Keystone Crossing
Suite 1300
Indianapolis, IN 46240
(317) 434-0370
Facsimile: 765.204.7161
aaron.williamson@wcivillaw.com

STATE OF INDIANA) IN THE DELAWARE COUNTY COURT
)SS:
 COUNTY OF DELAWARE) CAUSE NO.: 18C03-2011-CT-000120

LINDA L. STARKE COLSTEN)
)
 Plaintiff,)
)
 v.)
)
 MUNCIE SANITARY DISTRICT)
)
 Defendant.)

APPEARANCE BY ATTORNEY IN CIVIL CASE

Party Classification: Initiating: ☒ Responding: ☐ Intervening: ☐

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s): Linda L. Starke Colsten

2. Applicable attorney information for service as required by Trial Rule 5(B) (2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

3. Name: Aaron J. Williamson Atty. Number: 32803-49
 Address: 8888 Keystone Crossing Phone: 317.434.0370
 Suite 1300 Fax: 765.204.7161
 Indianapolis, IN 46240 Email: aaron.williamson@wcivillaw.com

4. There are other party members: Yes ☐ No ☒ (If yes, list on continuation page.)

5. If first initiating party filing this case, the clerk is requested to assign this case the following Case Type under Administrative Rule 8(b)(3):

6. I will accept service by FAX at the above noted number: Yes ☐ No ☒

7. This case involves support issues: Yes ☐ No ☒ (If yes, supply social security numbers for all family members on continuation page.)

8. There are related cases: Yes ☐ No ☒

9. This form has been served on all other parties. Certificate of Service is attached:
 Yes ☐ No ☒

10. Additional information required by local rule: None

Respectfully submitted

A handwritten signature in black ink, appearing to read "Aaron Williamson".

Aaron J. Williamson
Attorney No. 32803-49
WILLIAMSON CIVIL LAW, LLC
8888 Keystone Crossing, Ste. 1300
Indianapolis, IN 46240
(317) 434-0370
Facsimile: 765.204.7161
aaron.williamson@wcivillaw.com

STATE OF INDIANA	)	IN THE DELAWARE COUNTY COURT
	)SS:	
COUNTY OF DELAWARE	)	CAUSE NO.: 18C03-2011-CT-000120
LINDA L. STARKE COLSTEN)	
)	
Plaintiff,)	
)	
v.)	
)	
MUNCIE SANITARY DISTRICT)	
)	
Defendant.)	

SUMMONS

TO DEFENDANT: Muncie Sanitary District
300 N. High Street, 3rd Floor
Muncie, Indiana 47305

You are hereby notified that you have been sued by the persons named as Plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the Complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the Plaintiff.

An Answer or other appropriate response in writing to the Complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by the Plaintiffs.

If you have claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written Answer.

Dated 11/4/2020

Rick Spangh
CLERK, Delaware County Circuit Court



The following manner of service of Summons is hereby designated:
☒ Registered or Certified Mail
☐ Service on individual at above address: County
☐ Service on Agent: (specify)
☐ Service by Publication

Aaron J. Williamson
WILLIAMSON CIVIL LAW, LLC
8888 Keystone Crossing
Suite 1300
Indianapolis, IN 46240
Telephone: 317.434.0370
Facsimile: 765.204.7161
aaron.williamson@wcivillaw.com

STATE OF INDIANA	)	IN THE DELAWARE CIRCUIT COURT
	)SS:	
COUNTY OF DELAWARE	)	CAUSE NO. 18C03-2011-CT-000120
LINDA L. STARKE COLSTEN,)	
)	
Plaintiff,)	
)	
v.)	
)	
MUNCIE SANITARY DISTRICT,)	
)	
Defendant.)	

APPEARANCE BY ATTORNEY IN CIVIL CASE

1. The party on whose behalf this form is being filed is:

Initiating ____ Responding X Intervening ____; and
the undersigned attorney and all attorneys listed on this form now appear in this case for
the following parties:

Name of party **Defendant, Muncie Sanitary District**

Address of party *(see Question # 5 below if this case involves a protection from abuse
order, a workplace violence restraining order, or a no-contact order)*

Telephone # of party _____

(List on a continuation page additional parties this attorney represents in this case.)

2. Attorney information for service as required by Trial Rule 5(B)(2)

David L. Swider
Philip R. Zimmerly
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204

Attorney No. 517-49
Attorney No. 30217-06
Phone: (317) 684-5000
Fax: (317) 684-5173
Computer Address:
DSwider@boselaw.com
PZimmerly@boselaw.com

IMPORTANT: Each attorney specified on this appearance:

- (a) certifies that the contact information listed for him/her on the Indiana Supreme Court Roll of Attorneys is current and accurate as of the date of this Appearance;
- (b) **acknowledges that all orders, opinions, and notices from the court in this matter that are served under Trial Rule 86(G) will be sent to the attorney at the email address(es) specified by the attorney on the Roll of Attorneys regardless of the contact information listed above for the attorney;** and
- (c) understands that he/she is solely responsible for keeping his/her Roll of Attorneys contact information current and accurate, see Ind. Admis. Disc. R. 2(A).

Attorneys can review and update their Roll of Attorneys contact information on the Courts Portal at <http://portal.courts.in.gov>.

- 3. This is a N/A case type as defined in administrative Rule 8(B)(3).
- 4. This case involves child support issues. Yes ____ No X *(If yes, supply social security numbers for all family members on a separately attached document filed as confidential information on **light green paper**. Use Form TCM-TR3.1-4.)*
- 5. This case involves a protection from abuse order, a workplace violence restraining order, or a no – contact order. Yes ____ No X *(If Yes, the initiating party must provide an address for the purpose of legal service but that address should not be one that exposes the whereabouts of a petitioner.)* The party shall use the following address for purposes of legal service:

____ Attorney's address
____ The Attorney General Confidentiality program address
(contact the Attorney General at 1-800-321-1907 or e-mail address is **confidential@atg.state.in.us**).
____ Another address (provide) _____

- 6. This case involves a petition for involuntary commitment. Yes ____ No X
If Yes above, provide the following regarding the individual subject to the petition for involuntary commitment:

- (a) Name of the individual subject to the petition for involuntary commitment if it is not already provided in #1 above:

- (b) State of Residence of person subject to petition: _____

- (c) At least one of the following pieces of identifying information:

- (i) Date of Birth _____

- (ii) Driver's License Number _____

- State where issued _____ Expiration date _____

- (iii) State ID number _____
State where issued _____ Expiration date _____
- (iv) FBI number _____
- (v) Indiana Department of Corrections Number _____
- (vi) Social Security Number is available and is being provided in an attached confidential document Yes _____ No _____
7. There are related cases: Yes _____ No X (If yes, list on continuation page.)
8. Additional information required by local rule:

9. There are other party members: Yes _____ No X (If yes, list on continuation page.)
10. This form has been served on all other parties and Certificate of Service is attached:
Yes X No _____

Respectfully submitted,

/s/ David L. Swider

David L. Swider

/s/ Philip R. Zimmerly

Philip R. Zimmerly

*Attorneys for Defendant,
Muncie Sanitary District*

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2020, a copy of the foregoing "Appearance" was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Aaron J. Williamson, Esq.
Williamson Civil Law, LLC
8888 Keystone Crossing, Suite 1300
Indianapolis, IN 46240
aaron.williamson@wcivillaw.com

/s/ David L. Swider

David L. Swider

3964233

STATE OF INDIANA	)	IN THE DELAWARE CIRCUIT COURT
	)SS:	
COUNTY OF DELAWARE	)	CAUSE NO. 18C03-2011-CT-000120
LINDA L. STARKE COLSTEN,)	
)	
Plaintiff,)	
)	
v.)	
)	
MUNCIE SANITARY DISTRICT,)	
)	
Defendant.)	

MOTION FOR ENLARGEMENT OF TIME TO ANSWER COMPLAINT

Defendant, Muncie Sanitary District (the "District"), by counsel, pursuant to Ind. Trial Rule 6(B)(1), moves this Court for a 30-day enlargement of time to respond to the Complaint for Damages ("Complaint") filed by Plaintiff, Linda L. Starke Colsten ("Plaintiff"), and states as grounds therefor:

1. The Complaint was filed with this Court on November 2, 2020, and was served on the District by certified mail on November 10, 2020.
2. The District's answer to the Complaint is due on December 3, 2020 and that time has not yet expired.
3. The District moves this Court for an initial 30-day enlargement of time to respond to Plaintiff's Complaint.
4. Said enlargement of time shall expire on January 4, 2021.
5. No prior enlargements of time have been requested.

WHEREFORE, Defendant, Muncie Sanitary District, by counsel, respectfully requests the Court to enlarge the time within which it must respond to Plaintiff's Complaint, for a period of 30 days, to and including January 4, 2021.

Respectfully submitted,

/s/David L. Swider

David L. Swider (#517-49)

Philip R. Zimmerly (#30217-06)

BOSE McKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000; (317) 684-5173 Fax
dswider@boselaw.com
pzimmerly@boselaw.com

*Attorneys for Defendant,
Muncie Sanitary District*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 17, 2020, a copy of the foregoing “Motion for Enlargement of Time to Answer Complaint” was filed electronically. A copy of this filing will be sent to the following counsel of record by operation of the Court’s electronic filing system.

Aaron J. Williamson, Esq.
Williamson Civil Law, LLC
8888 Keystone Crossing, Suite 1300
Indianapolis, IN 46240
aaron.williamson@wcivillaw.com

/s/David L. Swider

David L. Swider

3964240

STATE OF INDIANA)
)SS:
COUNTY OF DELAWARE)

IN THE DELAWARE CIRCUIT COURT

CAUSE NO. 18C03-2011-CT-000120

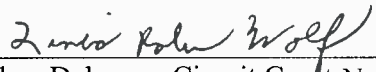
LINDA L. STARKE COLSTEN,)
)
 Plaintiff,)
)
 v.)
)
MUNCIE SANITARY DISTRICT,)
)
 Defendant.)

ORDER

This matter having come before the Court on the Motion for Enlargement of Time to Answer Complaint filed by Defendant, Muncie Sanitary District; and the Court, being fully advised of all factual matters in this cause, now finds that the motion should be **GRANTED**, and it is accordingly

ORDERED that Defendant, Muncie Sanitary District's, response to Plaintiff's Complaint is due on or before **January 4, 2021**.

Dated: November 17, 2020



Judge, Delaware Circuit Court No. 3

Copies to:

Aaron J. Williamson, Esq.
Aaron.williamson@wcivillaw.com

David L. Swider, Esq.
dswider@boselaw.com

Philip R. Zimmerly, Esq.
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